



U.S. Department of Justice

United States Attorney
District of New Jersey
Civil Division

RACHAEL A. HONIG
ACTING UNITED STATES ATTORNEY

*John T. Stinson
Assistant United States Attorney*

*402 East State Street, Room 430
Trenton, NJ 08608
john.stinson@usdoj.gov*

*main: (609) 989-2190
direct: (609) 858-0305
fax: (609) 989-2275*

February 19, 2021

By ECF

Hon. Renée Marie Bumb, U.S.D.J.
United States District Court for the
District of New Jersey
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, NJ 08101

Re: *Young v. Ortiz, 21-2675 (RMB)*

Dear Judge Bumb:

I am the Assistant U.S. Attorney assigned to represent Respondent, Warden Ortiz, in the above-referenced matter. On an emergency basis, Petitioner Devon Young, an inmate at FCI Fort Dix, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. ECF No. 1 (the “Emergency Petition”). Young argues that, as a “medically vulnerable” inmate, he is at high risk of adverse consequences if he contracts COVID-19, and therefore, should be released because of the conditions at FCI Fort Dix. *Id.* The Court ordered Respondent to respond to the Emergency Petition within seven days 7 days of the date of the entry of the Order. ECF No. 2. Respondent’s answer is currently due February 25, 2021.

I write to provide the Court with Petitioner’s medical records pertinent his claims (filed separately at ECF No. 4). In light of these records, I respectfully ask the Court to reconsider its Order to Answer and conduct further *sua sponte* review of this matter. Alternatively, I ask the Court to grant Respondent an additional 30 days to answer the petition. For the reasons that follow, Respondent believes this matter does not pose an emergency and very likely warrants *sua sponte* dismissal.

Hon. Renée Marie Bumb

February 19, 2021

Page 2 of 3

As an initial matter, Young mentions once in the Emergency Petition that he already contracted COVID-19 while placed at FCI Elkton in Ohio. His sentencing court denied him compassionate release on that basis, finding as follows:

Mr. Young tested positive for COVID-19 approximately one month ago and is yet to develop any signs of illness. Despite belonging to an at-risk group, it appears that he is part of the large number of individuals who contact COVID-19 but remain asymptomatic. Mr. Young's request, that he be released to the custody of his family rather than a hospital, further supports this inference. Given these circumstances, the Court finds that Mr. Young has failed to demonstrate an extraordinary and compelling reason justifying his early release.

Order (docket no. 1540), *United States v. Young*, Crim. No. 10-00003-SEB-DML (S.D. Ind. July 27, 2020). His medical records support the finding that he contracted COVID-19 in June 2020 and then cleared the infection without incident.

Young fails to mention in his Emergency Petition that he has received both doses of the Pfizer/BioNTech COVID-19 vaccine at FCI Fort Dix. As shown in the medical records separately filed under seal today (*see* ECF No. 4, Exhibit A), BOP administered the first vaccine dose to Young on January 21, 2021, one week prior to the date on the Emergency Petition (*i.e.*, January 28, 2021). BOP administered the second vaccine dose to Young on February 10, 2021, over a week before this Court issued its Order to Answer.¹ Federal district courts across the country are declining to find extraordinary circumstances warranting early release of inmates who have either contracted COVID-19 or been inoculated against it or both. *See, e.g., United States v. Gaskin*, Crim. No. 16-249-JMS-MJD, 2021 WL 598291, at *5 (S.D. Ind. Feb. 16, 2021); *United States v. Ballenger*, Crim. No. 16-5535 BHS, 2021 WL 308814 (W.D. Wash. Jan. 29, 2021); *United States v. White*, Crim. No. 5:09-053-DCR, 2021 WL 310929 (E.D. Ky. Jan. 29, 2021).

¹ As of February 19, 2021, less than 5% of people in the United States had received both doses of any COVID-19 vaccine. *See* National Public Radio, "How Is The COVID-19 Vaccination Campaign Going In Your State?" (Feb. 19, 2021), available at <https://www.npr.org/sections/health-shots/2021/01/28/960901166/how-is-the-covid-19-vaccination-campaign-going-in-your-state> (last visited Feb. 19, 2021).

Hon. Renée Marie Bumb
February 19, 2021
Page 3 of 3

In light of these records showing that Young cleared a COVID-19 infection over six months ago and that he has now been fully vaccinated against the virus, Respondent respectfully requests that this Court reconsider its Order to Answer. The Court has the authority to dismiss the Emergency Petition *sua sponte* based on these facts.

In the alternative, if the Court concludes that an Answer is still warranted under these circumstances, Respondent respectfully requests an extension of 30 days to answer the Emergency Petition. The facts set forth in this letter (and the medical records at ECF No. 4) demonstrate that Young's situation is not emergent, and this additional time will permit the Government to collect Young's BOP records and respond to his allegations in full.

Thank you for your consideration of this matter.

Respectfully submitted,

RACHAEL A. HONIG
Acting United States Attorney

By: /s / John T. Stinson
JOHN T. STINSON
Assistant United States Attorney

Enclosure

cc: Devon Young (via pre-paid U.S. Mail)
Reg. No. 23887-076
FCI Fort Dix
P.O. Box 2000
Joint Base MDL, NJ 08640